



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BY FIRST CLASS MAIL AND FACSIMILE (202) 654-9126

Mark E. Elias, Esq.
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700 13th Street, N.W., Suite 600
Washington, DC 20463

JUN 27 2013

RE: MUR 6583
Nevada State Democratic Party, et. al.

Dear Mr. Elias:

On May 31, 2012, the Federal Election Commission notified your clients, the Nevada State Democratic Party and Jan Churchill in her official capacity as treasurer ("Nevada Democratic Party") and Berkley for Senate and Steven W. Mele in his official capacity as treasurer (the "Committee"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). On June 24, 2013, the Commission found, on the basis of the information provided in the complaint and by your clients, that there is no reason to believe that the Nevada Democratic Party and the Committee, violated 2 U.S.C. § 441a by making or receiving excessive in-kind contributions. The Commission also found no reason to believe that the Nevada Democratic Party violated 2 U.S.C. § 441d and 11 C.F.R. § 110.11 by distributing party coordinated communications without the appropriate disclaimers, and closed the file in this matter. The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). If you have any questions, please contact Camilla Jackson Jones, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Mark D. Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Nevada State Democratic Party and Jan Churchill, MUR: 6583
in her official capacity as treasurer

Berkley for Senate and Steven W. Mele,
in his official capacity as treasurer

I. INTRODUCTION

This matter involves allegations that the Nevada State Democratic Party and Jan Churchill in her official capacity as treasurer ("Nevada Democratic Party") made an excessive in-kind contribution to Berkley for Senate and Steven W. Mele in his official capacity as treasurer (the "Committee") and failed to include an appropriate disclaimer on mailers.

The Complaint alleges that the Nevada Democratic Party created and distributed at least two mail pieces that did not qualify as "party exempt" expenditures, which resulted in excessive in-kind contributions to the Committee. See 2 U.S.C. § 441a(a); 11 C.F.R. §§ 100.87, 110.11(d)(3)(e). The Nevada Democratic Party and the Committee filed a joint response denying any violation of the Federal Election Campaign Act of 1971, as amended (the "Act"). Resp. at 1 (June 19, 2012). Respondents asserts that the Nevada Democratic Party did not pay for the mailers as "party exempt" expenditures under 11 C.F.R § 100.87, but instead paid for the mailers as coordinated party expenditures under 2 U.S.C. § 441a(d). The Nevada Democratic Party further contends that these mail pieces included the appropriate disclaimer for such coordinated party communications, as set forth in 2 U.S.C. § 441d and 11 C.F.R. § 110.11(d)(1)(ii).

The Commission found no reason to believe that the Nevada Democratic Party and the Committee violated 2 U.S.C. § 441a by making or receiving excessive in-kind contributions.

1 The Commission also found no reason to believe that the Nevada Democratic Party violated 2
2 U.S.C. § 441d and 11 C.F.R. § 110.11 by distributing communications without the appropriate
3 disclaimer.

4 II. FACTUAL AND LEGAL ANALYSIS

5 A. Background

6 The Act provides limitations on the amount of contributions that a committee may make
7 to a candidate. 2 U.S.C. § 441a(a). A multicandidate committee may not make contributions “to
8 any candidate and his authorized political committee with respect to any election for Federal
9 office which, in the aggregate, exceed \$5,000.” *Id.* § 441a(a)(2)(A). The Act grants the national
10 and state committees of a political party special authority, however, to “make expenditures in
11 connection with the general election campaign of candidates for Federal office,” in full
12 coordination with the candidates and subject to certain contribution limits.¹ *Id.* § 441a(d); see
13 also 11 C.F.R. § 109.30. These “coordinated party expenditures” may be made before or after a
14 party’s candidate has been nominated, regardless of whether that candidate ultimately becomes
15 the party’s nominee, so long as any such expenditures made before the nomination comply with
16 the applicable limits. 11 C.F.R. § 109.34.

17 Payments by the political party for coordinated expenditures must either be treated as in-
18 kind contributions to the candidate under 11 C.F.R. § 100.52(d), or made pursuant to the
19 coordinated party expenditure authority in 2 U.S.C. § 441a(d) and 11 C.F.R. § 109.32. 11 C.F.R.

¹ To qualify, a communication that is coordinated between a state or national party committee and a federal candidate or his or her authorized committee must satisfy a three-part test relating to payment, content, and conduct. See 11 C.F.R. § 109.37(a)(1)-(3). First, the communication must be paid for in whole or part by the political party committee or its agent. *Id.* § 109.37(a)(1). Second, the communication must be a public communication under Section 100.26 and comply with the further restrictions identified in Section 109.37(a)(2), including for Senate candidates the distribution within the candidate’s jurisdiction of certain campaign materials that either expressly advocate the election or defeat of the candidate or refer to her within 90 days of the election. *Id.* § 109.37(a)(2). Third, the communication must also be coordinated between the political party and the candidate’s authorized committee or its agents, while satisfying the conduct standard described in Section 109.21(d). *Id.* § 109.37(a)(3).

§ 109.37(b). Coordinated party expenditures by state committees on behalf of senate candidates may not exceed an amount calculated by multiplying two cents by the voting age population of the state or \$20,000. 11 C.F.R. § 109.32(b). A political party committee must report any coordinated party expenditures, as described in 11 C.F.R. § 104.1-.22.

All party coordinated communications made and distributed prior to the date the candidate becomes the party's nominee must meet the disclaimer requirements of 2 U.S.C. § 441d and 11 C.F.R. § 110.11: they must be clear and conspicuous; be of sufficient type size to be clearly readable; be contained in a printed box set apart from the other contents of the communication; and must clearly state who paid for the communication. See 11 C.F.R. § 110.11(c)(2), (d)(1)(ii); *Federal Election Commission Campaign Guide for Political Party Committees* at 59-66 (July 2009).

B. The Nevada Democratic Party Mailers

On or about May 24, 2012, prior to the Nevada primary election for the U.S. Senate, the Nevada Democratic Party distributed two mail pieces advocating the election of Congresswoman Shelley Berkley to the Senate. Both mail pieces used (1) pictures of Berkley; (2) Berkley's campaign logo "Shelley Berkley for U.S. Senate"; (3) the disclaimer "Paid for By the Nevada State Democratic Party"; (4) the Nevada Democratic Party's address for the return address; and (5) a non-profit U.S. postage stamp. Compl., Exs. A, B (May 24, 2012). The mail pieces highlighted the accomplishments and achievements of Berkley, one of five Democratic primary candidates, and republished various campaign materials, including multiple pictures of Berkley, her family, and campaign slogan. *Id.* They also included the Committee's website, and one included the Committee's phone number. The mail pieces provided a disclaimer set aside in a

1 box, which stated, "Paid for by the Nevada State Democratic Party," and also displayed a
2 "Nonprofit U.S. Postage Paid" stamp of the Democratic Party of Nevada.² *Id.*

3 The Complaint alleges that the Nevada Democratic Party improperly attempted to
4 distribute its mail pieces as "party exempt" mass mailings, which would allow it to expressly
5 advocate the election of Berkley in coordination with the Committee, without having to treat the
6 costs related to the mailings as contributions. Compl. at 2; *see also* 11 C.F.R. § 100.87. The
7 Complaint asserts this was improper because the mailers do not qualify as "party exempt"
8 expenditures, because "party exempt" expenditures may only be executed on behalf of the
9 party's nominee or after the primary election has occurred. Compl. at 2; 11 C.F.R. § 100.87.
10 The Complainant therefore concludes that the cost of the mass mailings constituted in-kind
11 contributions to the Committee in excess of the \$5,000 contribution limit set forth in 2 U.S.C.
12 § 441a(a)(2). The Complaint further asserts that the mailers did not comply with the disclaimer
13 requirements for party exempt mailers in violation of 11 C.F.R. § 110.11(d)(3)(e). Compl. at 3.

14 Respondents agree that the Nevada Democratic Party mail pieces do not constitute "party
15 exempt" activities under 11 C.F.R. § 100.87. Resp. at 1-2. Rather, they contend that the mail
16 pieces were coordinated party expenditures, authorized under the Act and Commission
17 regulations, and displayed the appropriate disclaimers for such communications. *Id.* at 1-4
18 (citing 2 U.S.C. § 441a(d); 11 C.F.R. § 109.37(b)).

19 The Complaint applied the wrong regulation to NSDP's mailings. The provision on
20 which the Complainant relied addresses a party committee's use of campaign materials "in
21 connection with volunteer activities on behalf of any nominee(s) of such party." 11 C.F.R.
22 § 100.87. But, the record and allegations provide no basis to conclude that the Nevada

² Berkley won the primary election held on June 12, 2012, and became the Democratic Party's senate candidate. On November 6, 2012, she lost the general election to incumbent Senator Dean Heller.

1 Democratic Party distributed the mailers for use in connection with any volunteer activities on
2 behalf of Berkley. Rather, the available information indicates that the Nevada Democratic Party
3 made coordinated party expenditures, as it was permitted to do under 2 U.S.C. § 441a(d) and
4 11 C.F.R. § 109.30. The Nevada Democratic Party paid for the mailer. The mailers clearly
5 identified Berkley, expressly advocated for her election, and were distributed in her jurisdiction
6 within 90 days of the primary election. *See* 11 C.F.R. § 109.37(a)(1)-(3); *see also* 11 C.F.R.
7 § 100.22(a). And the Nevada Democratic Party's disclosure reports show that it complied with
8 the reporting requirements and expenditure limits for coordinated party expenditures set forth in
9 11 C.F.R. §§ 104.1-.22 and 109.32(b). The coordinated party expenditure limit for 2012 general
10 election Senate nominees in Nevada was \$187,900.³ The June 2012 Monthly Report discloses
11 that the Nevada Democratic Party made \$80,675 in coordinated party expenditures, relating to
12 the Berkley mailers. Thus, the cost of these mailers, which were the only coordinated party
13 expenditures reported for the 2012 election cycle, did not exceed the coordinated party
14 expenditure limits.

15 The disclaimers likewise adhered to the requirements of the Act and Commission
16 regulations. The mailers include a disclaimer that states "Paid for by Nevada State Democratic
17 Party," which is set aside in a box and printed in readable type on the face of the mailers, just
18 below the recipient's address. Because the mailers were distributed before the primary election,
19 the Nevada Democratic Party disclaimer met the requirements for coordinated party
20 expenditures, as set forth in 11 C.F.R. § 110.11(d)(1)(i). *See* 11 C.F.R. § 110.11(d)(1)(ii).

21 Accordingly, the Commission found no reason to believe that the Nevada Democratic
22 Party and the Committee violated 2 U.S.C. § 441a by making or receiving excessive in-kind

³ *Price Index Adjustments for Expenditure Limitations and Lobbyist Bundling Disclosure Thresholds*, 77
Fed. Reg. 9925 (Feb. 21, 2012).

- 1 contributions. The Commission also found no reason to believe that the Nevada Democratic
- 2 Party violated 2 U.S.C. § 441d and 11 C.F.R. § 110.11 by distributing party coordinated
- 3 communications without the appropriate disclaimer.

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